

House Bill 104  
January 17, 2007  
Presented by Bob Lane  
House Natural Resources Committee

Mr. Chairman and committee members, I am Bob Lane, Chief Legal Counsel of the Montana Department of Fish, Wildlife & Parks (FWP).

FWP supports HB104 because it will help maintain the original intent of allowing limited, individual domestic or commercial wells without a permit. This is justified on the philosophy that the burden of getting a permit for such limited uses outweighs the impacts on senior water users.

The problem is that the exception (35 gallons per minute with 10 acre-feet of use) is being used for major developments, such as subdivisions. This does have potential impact on senior water rights, including senior instream flow rights. Without the permit process to consider and mitigate impacts, senior water right holders will slowly lose their constitutionally protected property rights to the use of water. In times of water shortage, shutting off wells will do nothing to increase flows needed for senior users because of the delayed timing of well depletions on a stream or river.

It is important to accept the fact that most new development is, and will be, in places where the ground water is tributary to the surface water of streams and rivers. Every gallon of ground water consumed will be a gallon less in the stream or river.

The proposed resolution in HB 104 is a step in the right direction to recognize and take into account the connection between ground water and surface water before it is too late.

The use of ground water wells under the exception to supply shallow ponds near rivers and streams in alluvial valleys is an example of potential problems. These ponds are constructed for aesthetic purposes or as private fish and wildlife ponds. Because these ponds are typically filled by seepage without a diversion structure, their affect on senior users in times of low water cannot be prevented. There is no headgate to close. Private individuals are benefiting at the expense of public streams.

Water for ponds and water for subdivisions should only be allowed through the state permitting process. The bill does not prohibit water development. The bottom line is that it does help prevent the reallocation of wealth (represented by the rights to use water) from senior surface water right users to new and junior ground water users.